

## DECISION

### GRAFTON PLANNING BOARD

#### MODIFICATION #4

#### MAJOR COMMERCIAL SPECIAL PERMIT (MCSP 2001-7.4) & SITE PLAN APPROVAL

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**Eliminate Retaining Wall & Relocate Drainage Systems  
73-81 Creeper Hill Road, North Grafton**

**John Colorio of Colorio Realty, LLC d/b/a Dimitria Delights, Inc. (Applicant / Owner)**

Decision of the Planning Board of the Town of Grafton, Massachusetts (hereinafter the BOARD) on the petition of John Colorio of Colorio Realty, LLC d/b/a Dimitria Delights, Inc. (hereinafter the APPLICANT / OWNER) for Modification #4 of a Major Commercial Special Permit & Site Plan Approval (MCSP 2001-7.4) to alter the addition at the rear of the building, to remove a retaining wall, and relocate the drainage systems, for property located at 73-81 Creeper Hill Road (hereinafter the SITE) which is located in an Office/Light Industrial (OLI) Zoning District and shown on Grafton Assessor's Map 18, Lot 33, by deed recorded in the Worcester District Registry of Deeds Book 49933, Page 101. The application was formally received on August 9, 2017.

### I. BACKGROUND

The above referenced application for Modification of a Special Permit (SP 2001-7.4) & Site Plan Approval (hereinafter the Application) was submitted on August 9, 2017. Notice of the Public Hearing and the subject matter thereof was published in the Grafton News on August 24 and August 31, 2017, and posted with the Town Clerk's Office. Abutters were notified by First Class Mail. The public hearing on the Application was opened on Monday, September 11, 2017 at which time neither the Applicant nor Owner were present to discuss the application. As a result the public hearing was continued to September 25, 2017 in order for the Applicant to present the application. The continued public hearing on September 25, 2017 was presented by John Liston, P.E. of Thompson & Liston Associates, Inc. on behalf of the Applicant/Owner.

This application represents a fourth modification of Special Permit and Site Plan Approval (SP2001-7.4) for 73-81 Creeper Hill Road. This modification is requested to eliminate a retaining wall and relocate the drainage systems. The permitting history of this site includes:

1. Special Permit (MCSP 2001-7) and Site Plan Approval - ***Approved August 27, 2001*** – to construct a 21,980 sq. ft. addition to the existing baking facility.
2. Minor Modification of Major Commercial Special Permit and Site Plan Approval (MCSP 2001-7.1) - ***Approved October 27, 2008*** – to install a flour silo system.
3. Modification of Major Commercial Special Permit and Site Plan Approval (MCSP 2001-7.2) - ***Approved January 12, 2015*** - to allow the use of existing unused apartment space for security guard apartment.
4. Modification of Major Commercial Special Permit and Site Plan Approval (MCSP 2001-7.3) - ***Approved March 27, 2017*** – to expand bakery operation.

The following Board members were present throughout the public hearing: Chairman Michael Scully, Vice Chairman Robert Hassinger, Clerk J. Daniel Graham, Members David Robbins and Linda Hassinger, and Associate Member Sharon Carroll-Tidman. At the public hearing, all those wishing to speak to the petition were heard. Following public input the hearing was closed on September 25, 2017.

## **II. SUBMITTALS**

The following items were submitted to the Board for its consideration of this application:

- Exhibit 1. Unbound Application consisting of the following:
- a. Application for Modification, received by the Town Clerk's Office on August 9, 2017, received on August 9, 2017; 1 page.
  - b. Certificate of Good Standing, signed by the Treasurer Collector's Office on August 8, 2017; received August 9, 2017; 1 page.
  - c. Certified Abutters List, signed by the Assessor's Office on August 8, 2017, received August 9; 1 page.
  - d. Correspondence from James Tetreault, Thompson-Liston Associates, Inc., Re: Modification of Special Permit and Site Plan Approval, dated and received August 9, 2017; 2 pages.
  - e. Project Description at 81 Creeper Hill Road, prepared by Thompson-Liston Associates, Inc., received August 9, 2017; 1 page.
  - f. Correspondence from Thompson-Liston, Associates, Inc., Re: Modification of Special Permit and Site Plan Approval, dated and received August 9, 2017; 1 page.
  - g. Site Plan of Land for Building Addition, prepared by Thompson-Liston Associates, Inc., dated August 8, 2017, received August 9, 2017; 7 pages.
  - h. Drainage Report for 81 Creeper Hill Road, Grafton, MA, prepared by Thompson-Liston, Associates, Inc., stamped by James L. Tetreault, dated August 8, 2017, received August 9, 2017; 56 pages.
- Exhibit 2. Public Hearing Notice for Hearing on September 11, 2017; received by the Town Clerk on August 17, 2017; 1 page.
- Exhibit 3. Amended Hearing Notice for Hearing on September 11, 2017; received by the Town Clerk on August 21, 2017; 1 page.
- Exhibit 4. Correspondence from James Tetreault, Thompson-Liston Associates, Inc., Re: Request to Amend the Order of Conditions issued under DEP file #164-0931, dated and received August 24, 2017; 1 page.
- Exhibit 5. Revised Site Plan of Land for Building Addition, prepared by Thompson-Liston Associates, Inc., dated August 8, 2017, revised August 21, 2017, received August 24, 2017; 7 pages
- Exhibit 6. Stormwater Management Standard #1, prepared by Thompson-Liston Associates, Inc., no date, received August 25, 2017; 7 pages.

- Exhibit 7. Peer Review from Graves Engineering, Inc., Subject: Dimitria Delights – Building Addition 73-81 Creeper Hill Road Modified Site Plan and Wetlands Regulations Review, dated and received September 6, 2017; 4 pages.
- Exhibit 8. Email from Katrina Koshivos, Zoning Board of Appeals, Subject 73/81 Creeper Hill Road – Dimitria Delights, dated and received September 8, 2017; 1 page.
- Exhibit 9. Public Hearing Sign In Sheet, dated September 11, 2017, 1 page.
- Exhibit 10. Correspondence from James Tetreault, Thompson-Liston Associates, Inc., dated and received September 18, 2017; 2 pages
- Exhibit 11. Revised Site Plan of Land for Building Addition, prepared by Thompson-Liston Associates, Inc., dated August 8, 2017, revised September 13, 2017, received September 19, 2017; 7 pages
- Exhibit 12. Peer Review from Graves Engineering, Inc., Subject: Dimitria Delights – Building Addition 73-81 Creeper Hill Road Modified Site Plan and Wetlands Regulations Review, dated and received September 19, 2017; 2 pages.

### **III. FINDINGS**

At their meeting of November 3, 2017, after due consideration of the exhibits submitted and the entire record of proceedings introduced and accepted in this matter, the Grafton Planning Board (motion by Mr. Graham, seconded by Ms. Hassinger ) voted 4-0 to make the following Findings:

- 1. That Applicant seeks the modification of MCSP 2001-7.3 as approved by the Board on March 27, 2017.
- 2. That determinations regarding the following findings are also predicated upon satisfactory completion of the work and site improvements shown on the Plans (Exhibit #11) and maintenance of the Site in accordance with this Decision, as well as all applicable Federal, State and Local regulations, except where modified by this Decision.
- 3. That the Applicant requested a waiver from Section 4.2.2 – Off Street Parking Schedule of the Grafton Zoning Bylaw (Waiver #1).

At their meeting of November 3, 2017, after due consideration of the exhibits submitted and the entire record of proceedings introduced and accepted in this matter, the Grafton Planning Board (motion by Mr. Graham, seconded by Ms. Hassinger) voted 4-0 to make the following Findings pertaining to Section 1.5.5 (a) . through Section 1.5.5(i):

- 4. With regard to Section 1.5.5 (a) of the ZBL, that based upon the Findings stated within this Decision, ingress and egress to the property and proposed structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and control and access in case of fire or catastrophe, are adequate.

5. With regard to Section 1.5.5(b) of the ZBL, that based upon the Findings stated within this Decision, off-street parking and loading areas where required, and the economic, noise, glare, or odor effects of the Special Permit on adjoining properties and properties generally in the district are satisfactory.
6. With regard to Section 1.5.5(c) of the ZBL, that based upon the Findings stated within this Decision, refuse collection or disposal and service areas are satisfactory.
7. With regard to Section 1.5.5(d) of the ZBL, that based upon the Findings stated within this Decision, screening and buffering with reference to type, dimensions and character are adequate.
8. With regard to Section 1.5.5(e) of the ZBL, that based upon the Findings stated within this Decision, signs and exterior lighting with reference to glare, traffic safety, economic effect are compatible and in harmony with properties in the district.
9. With regard to Section 1.5.5(f) of the ZBL, that based upon the Findings stated within this Decision, the required yards and other open space requirements are adequate.
10. With regard to Section 1.5.5(g) of the ZBL, that the proposed use of the property (as presented in the EXHIBITS stated within this Decision) is generally compatible with adjacent properties and properties in the district.
11. With regard to Section 1.5.5(h) of the ZBL, that upon satisfying and complying with all applicable Board of Health requirements, and based upon the Findings stated within this Decision, they will not have a significant adverse impact on a public or private water supply. The structure will be served by Town water and sewer services.
12. With regard to Section 1.5.5(i), that the Board finds that based on the Exhibits and Findings stated within this Decision that there will not be any significant or cumulative impact upon municipal water supplies and that the alteration of the addition at the rear of the building, removal a retaining wall, and relocation the drainage systems will occur outside of the Water Supply Protection Overlay District. The structure will be served by Town water and sewer services.
13. With regard to Section 1.5.5(j) of the ZBL, that, based upon the Findings stated within this Decision, protection of important historic, cultural and scenic landscapes with regard to the proposed development is satisfactory. No information was received or discussed regarding this matter.

#### **IV. WAIVERS**

1. At their meeting of November 3, 2017, after due consideration of the exhibits submitted and the entire record of proceedings introduced and accepted in this matter, the Grafton Planning Board (motion by Mr. Graham, seconded by Ms. Hassinger) voted 4-0 to **GRANT** the Applicant's request for a waiver from the requirements of Section 4.2 – Off-Street Parking and Loading from the Grafton Zoning Bylaw. The required parking for this site per the calculations is 108 spaces; the Applicant will be providing 91 spaces, which will be an increase of the existing conditions of 56 spaces.

The waiver from Section 4.2 – Off Street Parking and Loading was previously granted by the Planning Board in its March 27, 2017 decision. The following is the excerpt from the decision granting the waiver:

*The Board and the Applicant discussed the off street parking requirements in relation to the nature of the bakery operations in terms of number of employees and number of working shifts in light of the proposed additional square footage (see FINDING #F7). No new employees are proposed at this time and the existing parking area along with the proposed parking in a gravel lined lot on the southwestern area of the site provides the required parking for the existing employees. However the additional square footage would result in requiring more parking spaces. The Grafton Zoning By-Law only calculates parking requirements based on use and floor area, not the number of employees in relation to the specific use or operations. The Board recognizes that while no new employees are proposed at this time the potential for additional employees is present. The Board further notes that the Applicant did address the issue under the provisions of Section 4.2.5.1 – Reserved Parking of the ZBL.*

*The Board notes that in granting this waiver request that there were unique circumstances in light of the proposed use of the addition and the revised plan which provides parking in reserve if the expansion should require the addition of new employees.*

The Board reaffirms its previous granting of the requested wavier of Section 4.2 – Off Street Parking and Loading

## **V. CONDITIONS & DECISION**

At their meeting of November 3, 2017, after due consideration of the exhibits submitted and the entire record of proceedings introduced and accepted in this matter, the Grafton Planning Board (motion by Mr. Graham, seconded by Ms. Hassinger) voted 4-0 to **APPROVE** the Modification of a Major Commercial Special Permit (MCSP 2001-7.4) and Site Plan Approval with the following conditions:

1. This Approval is for the fourth modification of Major Commercial Special Permit MCSP 2001-7 & Site Plan Review. Unless otherwise modified by this Decision, all Conditions of the Primary Decision and subsequent decisions remain in full force and effect unless modified by this decision.
2. Any further modification to this application shall require, prior to implementing such change, a determination from the Planning Board as to whether the proposed change is substantially different that presented in the materials and information used in making this Decision. The Planning Board reserves the right to solicit comments from other Town boards, departments and committees, as well as its consulting engineer, in making determinations regarding such changes. The Planning Board may, upon its determination, require a modification of the Decision if it finds that the proposed changes are substantial in nature and of public concern, and substantially alter the plans and information used in making this Decision.

3. All site development and construction shall be performed in accordance with the Decision and approved Plans (Exhibit 11) as well as with all applicable Federal, State and Town laws, ordinances and regulations.
4. Construction of the improvements shown on the Plans approved as part of this Decision is subject to approval by the Grafton Conservation Commission. Any Order of Conditions and/or permits issued by the Conservation Commission with respect to this Application are hereby incorporated by reference and shall constitute a condition of this Decision. If such Order of Conditions and/or permits require substantial modifications to any of the plans approved by the Planning Board, the Board may, upon its determination, require a modification of this Decision if it finds that the proposed changes are substantial in nature and of public concern, and substantially alter the plans and information used in making this Decision.
5. All grading and construction shall be performed in accordance with the Plan, as well as all applicable Federal, State and Local regulations, and shall be accomplished so as not to discharge any non-permitted pollutants or siltation into waterways during construction or after completion of the work (Exhibit 1e).
6. The Conditions set forth in this Decision shall be inscribed on a sheet of the Plans suitable for recording at the Worcester Registry of Deeds (WDRD). Such sheets shall be recorded at the Worcester District Registry of Deeds in accordance with Condition A7 of this Decision.
7. Prior to the commencement of work, the Planning Board shall be provided with the following:
  - a. Four (4) full size, 24" x 36", endorsed and recorded plan sets, one of which shall be sent directly to the Town's peer review consulting engineer.
  - b. An electronic copy of the endorsed and recorded plan set. The electronic copy shall be in a "PDF" compatible format.
8. Construction shall only occur Monday through Saturday between the hours of 7:00 a.m. and 5:00 p.m., and there shall be no construction activity on State or Federal holidays.
9. In accordance with Section 1.5.8 of the Zoning Bylaw, this Special Permit and Site Plan Approval shall lapse within one (1) year from the date of the expiration of the appeal period if substantial use, or construction, has not been commenced except in accordance with the law. Any request for an extension of said period of validity shall be considered a Modification of this Special Permit, and such request shall be filed and reviewed in accordance with the procedure specified in Section 1.5 of the Zoning Bylaw.
10. This Special Permit decision shall be recorded at the Worcester District Registry of Deeds within thirty (30) days following the expiration of the appeal period. Modification #3 of MCSP 2001-7.3 shall be attached to this decision as Attachment A and recorded with this decision. A copy of such recorded Special Permit decision, including Deed Book and Page Number shall be submitted to the Planning Board office within thirty (30) days of recording.



11. By recording this Special Permit Decision in the Worcester Registry of Deeds, the applicant agrees to and accepts the conditions set forth in this Special Permit decision.
12. Any inability, failure or refusal by the Applicant to comply with the Conditions of this Decision, when notified of failure of compliance, shall be grounds for the immediate denial of building, construction or occupancy permits with respect to this project.

**V. RECORD OF VOTE**

Constituting a majority of the Planning Board, the following members voted 4-0 to **APPROVE** the Modification of Special Permit & Site Plan Approval Application with Conditions to alter the addition at the rear of the building, to remove a retaining wall, and relocate the drainage systems at 73-81 Creeper Hill Road based on the information received at the public hearing and the aforementioned findings.

|  |            |                                |            |
|--|------------|--------------------------------|------------|
| <u>Michael Scully, Chairman</u>        | <u>AYE</u> | <u>Linda Hassinger, Member</u> | <u>AYE</u> |
| <u>Robert Hassinger, Vice Chairman</u> | <u>AYE</u> |                                |            |
| <u>J. Daniel Graham, Clerk</u>         | <u>AYE</u> |                                |            |

**DATE OF FILING OF DECISION:      BY ORDER OF THE BOARD**

  
\_\_\_\_\_  
Joseph Laydon, Town Planner

11-3-2017  
\_\_\_\_\_  
Date

cc:    Applicant / Owner

|                      |                           |
|----------------------|---------------------------|
| • Building Inspector | • Conservation Commission |
| • Graves Engineering | • Assessor                |
| • Board of Health    |                           |

**To Whom It May Concern:** This is to certify that the 20-day appeal period has passed and there have been no appeals made to this office.

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Kandy Lavallee, Interim Town Clerk

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Date

